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HSBC MORTGAGE CORPORATION (USA) AND
HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy, and Leslie Marie Shearn, individually, on behalf of all others similarly situated, and on behalf of the general public,

Plaintiffs,

V.

HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

Defendants.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF ERIC LIBOY IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

1 I, Eric Liboy, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
 3 I could and would testify to the following:

4 2. I am employed by HSBC Mortgage Corporation (USA) ("HSBC Mortgage")
 5 as a Divisional Manager of the Private Banking Mortgage Group.

6 3. Between January 2005 and October 2007, I was the Divisional Manager of
 7 both the Premier and Private Banking Mortgage Groups. During this time period, I was the manager
 8 of six (6) Premier Mortgage Sales Officers ("Premier Loan Officers") based throughout the country.
 9 My employer is HSBC Mortgage, and HSBC Mortgage was the employer of all the Premier Loan
 10 Officers that I managed. HSBC Mortgage is listed as the employer on business cards, W-2 forms
 11 and paychecks. I explained to the Premier Loan Officers I managed that their employer was HSBC
 12 Mortgage, and that HSBC Mortgage is a separate company from HSBC Bank USA, N.A. ("HSBC
 13 Bank").

14 4. I was the manager of one Premier Mortgage Sales Officer in San Francisco,
 15 California, Larry Lee. I am informed that Larry Lee has opted to become involved in this lawsuit. I
 16 also managed three Premier Mortgage Sales Officers in New York state, one in Los Angeles,
 17 California and one in Miami, Florida. One of the Premier Mortgage Sales Officers that I managed in
 18 New York was Karen Flanagan, who I am informed has also opted to participate in this lawsuit.
 19 Premier Mortgage Sales Officers were loan officers who specialized in providing loans to high
 20 income clients. These clients received better pricing on loans and were allowed to borrow more
 21 money. HSBC Mortgage selected loan officers to specialize in this market, so they could provide
 22 superior service to high income clients.

23 5. As Premier Mortgage Sales Officers, both Larry Lee and Karen Flanagan
 24 were paid annual base salaries with guaranteed minimum bonus payouts.

25 6. HSBC Mortgage eliminated the Premier Loan Officer position in 2007. Both
 26 Larry Lee and Karen Flanagan resigned when their positions were eliminated and accepted a
 27 severance package.

1 7. The Premier Loan Officers that I managed had no set hours or work
 2 schedules. They could work whenever they wanted and for however long they wanted. They were
 3 not required to work evenings or weekends. They were not required to attend any particular
 4 community events. When they met with clients and how they generated business was up to them.

5 8. The Premier Loan Officers were assigned to sell mortgages to clients referred
 6 to HSBC Mortgage by Premier Centers, which are branches of HSBC Bank that are reserved for
 7 high income clients. The Premier Centers agreed to refer high income bank customers to HSBC
 8 Mortgage when customers asked about mortgages. Premier Loan Officers were not supposed to stay
 9 at the Premier Centers all day. They were only supposed to go to the Premier Centers if they
 10 scheduled appointments with clients to take place there. There was no reason for them to be at the
 11 Premier Center unless they had an appointment with a client.

12 9. How much time the Premier Loan Officers spent at the Premier Centers varied
 13 by region. In New York City, for example, the Premier Loan Officers rarely, if ever, went to the
 14 Premier Centers because they had so much volume and were too busy. It would have been a waste
 15 for them to spend any time at a bank because there is very little foot traffic at bank branches in New
 16 York City. HSBC is a very well known brand name in New York, and New York is a higher volume
 17 market.

18 10. I instructed the Premier Loan Officers I managed to spend most of their time
 19 out in the field trying to get business. I told them to get business from realtors, accountants, trade
 20 shows and any other source they could find. They were not supposed to be sitting at a bank branch
 21 at any time unless they chose to meet with a client there.

22 11. The Premier Loan Officers I managed could meet with clients anywhere they
 23 chose, which could be anywhere from a Starbuck's or another café to the client's home.

24 12. I reviewed the production of the Premier Loan Officers that were under my
 25 management. If their production was low, I asked them to give me a "call report" that listed who
 26 they met with and what they did to generate increased sales. The purpose of the call report was to
 27 enable me to give them advice about how to make more sales. I held many verbal coaching sessions

1 with Premier Loan Officers before giving anyone a written notice. For example, Larry Lee's
2 production was very low, and I had numerous one on one coaching sessions with him.

3 13. Approximately once every two weeks, I held meetings with the Premier Loan
4 Officers that I managed. Sometimes I met with the Premier Loan Officers in New York in person,
5 but most of the meetings were by phone. I provided individualized guidance to the Premier Loan
6 Officers and suggestions for getting more business.

7 I declare under penalty of perjury under the laws of the States of California and New
8 York and the United States of America that the foregoing declaration is true and correct to the best
9 of my personal knowledge.

10 Executed this 18th day of January, 2008, in Brooklyn, New York.

008, in Bronx, New York.

Eric Liboy

ERIC LIBOY